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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 SAM LUTFI, an individual,

12 Plaintiff,

13 vs.

14 LYNNE IRENE SPEARS, an individual,
15 JAMES PARNELL SPEARS, an
16 individual, BRITNEY JEAN SPEARS, an
17 individual; and DOES 1 through 25,
18 inclusive,

19 Defendants.

CASE NO. BC 406904

DEFENDANT LYNNE SPEARS'
TRIAL BRIEF RE: INTENTIONAL
INFLECTION OF EMOTIONAL
DISTRESS

Trial : October 2, 2012
Time: 10:00 am
Dept.: 71

Action Filed: February 3, 2009
Trial Date: October 1, 2012

20 Defendant Lynne Spears hereby respectfully submits this Trial Brief regarding
21 Plaintiff's Intentional Inflection of Emotional Distress ("IIED") Cause of Action.

22 Since the IIED claim is redundant to Plaintiff's Defamation claim (and also requires
23 proof of additional elements) it should be dismissed. Furthermore, Plaintiff has failed to
24 timely submit any Proposed Jury Instructions on his IIED claim. Finally, if and to the
25 extent that Plaintiff fails in his Opening Statement to set forth facts which would make a
26 prima facie case for IIED, a judgment of nonsuit should be granted.

27 **1. Since the IIED Claim is Redundant to Plaintiff's Defamation Claim (and**
28 **Also Requires Proof of Additional Elements) a Nonsuit Should be Granted.**

In *Blatty v. New York Times Co.*, 42 Cal.3d 1033 (1986), the plaintiff, an author of a novel,
brought an action against a newspaper based upon the newspaper's failure to include the novel on

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1 its best seller list. The plaintiff asserted negligent interference with prospective economic
2 advantage, negligence, trade libel and intentional interference with prospective economic
3 advantage. The California Supreme Court held that the lower court's judgment of dismissal of
4 these claims was proper. It found that these causes of action had as their gravamen the alleged
5 injurious falsehood of the best seller list and hence were required to satisfy the First Amendment
6 requirements. *See id.* at 1044–48. It stated: "Although the limitations that define the First
7 Amendment's zone of protection for the press were established in defamation actions, they are not
8 peculiar to such actions but apply to all claims whose gravamen is the alleged injurious falsehood
9 of a statement: '[t]hat constitutional protection does not depend on the label given the stated cause
10 of action' [citation], and no cause of action 'can claim ... talismanic immunity from constitutional
11 limitations' [citations]." *Id.* at 1042–43.

12 The Court further recognized that First Amendment limitations are applicable to all claims
13 whose gravamen is the alleged injurious falsehood of a statement because "[i]f these limitations
14 applied only to actions denominate 'defamation,' they would furnish little if any protection to free-
15 speech and free-press values," and plaintiffs would simply affix a label other than "defamation" to
16 their claims. *Id.* at 1045.

17 This reasoning applies with equal force here. While Plaintiff may attempt to label his
18 additional cause of action as Intentional Infliction of Emotional Distress, the gravamen of his
19 claim remains the alleged injurious falsehood of the Book. *Flynn v Higham* (1983) 149 Cal App
20 3d 677, 681 (labeling claim as IIED added nothing to claim for Defamation). Since the IIED claim
21 is entirely redundant to the Defamation claim, the IIED is superfluous and should be dismissed.

22 **2. Plaintiff Failed to Timely Submit Any Proposed Jury Instructions on His**
23 **IIED Claim in Violation of Code of Civil Procedure Section 607a**

24 Code of Civil Procedure Section 607a expressly provides that: "In every case which is
25 being tried before the court with a jury, it shall be the duty of counsel for the respective parties,
26 before the first witness is sworn, to deliver to the judge presiding at the trial and serve upon
27 opposing counsel, all proposed instructions to the jury covering the law as disclosed by the
28 pleadings. Thereafter, and before the commencement of the argument, counsel may deliver to such
judge, and serve upon opposing counsel, additional proposed instructions to the jury upon
questions of law developed by the evidence and not disclosed by the pleadings."

Prior to calling his first witness Plaintiff failed to serve and deliver to the Court any jury
instructions regarding his IIED claim in violation of C.C.P. Section 607a.

If and to the extent that Plaintiff fails in his Opening Statement to set forth facts which would make a prima facie case for IIED, a judgment of nonsuit should be granted pursuant to C.C.P. Section 581c. *Jensen v Hewlett-Packard Co* (1993) 14 CA 4th 958, 965 (judgment of nonsuit granted in defamation case after Plaintiff's opening statement failed to set forth facts sufficient to sustain cause of action). Where, as here, the First Amendment is involved, a judgment of nonsuit is a favored remedy. *Id.*

1. “Outrageous conduct” which is conduct so extreme that it goes beyond all possible bounds of decency. Conduct is outrageous if a reasonable person would regard the conduct as intolerable in a civilized community. Outrageous conduct does not include trivialities such as indignities, annoyances, hurt feelings, or bad manners that a reasonable person is expected to endure. *CACI 1602*.

2. Emotional distress includes suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame caused by the defendant's conduct. "Severe emotional distress" is not mild or brief; it must be so substantial or long lasting that no reasonable person in a civilized society should be expected to bear it. *CACI 1604*.

Dated: October 18, 2012

Respectfully Submitted,
ROHDE & VICTOROFF

By Stephen F. Rohde
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